



State of Arizona  
Department of Education

**Tom Horne**  
Superintendent of  
Public Instruction

CN# 26-09

MEMORANDUM

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**To:** School Health & Nutrition Program Sponsors

**From:** Mary Szafranski, Deputy Associate Superintendent  
Arizona Department of Education, Health & Nutrition Unit

Nicholas Dunford, Financial Services Director  
Arizona Department of Education, Health & Nutrition Unit

**Date:** May 22, 2009

**RE:** Clarification for Amending Food Service Management Company Contracts

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As a follow up to CN# 21-09, the purpose of this policy memorandum is to clarify the procurement process to implement the United States Department of Agriculture (USDA) new federal requirements related to Donated Foods. These new provisions are found in 7 CFR Part 250 "Management of Donated Foods in the Child Nutrition Programs" for School Food Authorities (SFA) using a Food Service Management Company (FSMC). SFAs are required to follow federal regulations to procure their FSMC contract. Federal regulations require that an SFA interested in contracting with a FSMC, request proposals from interested FSMCs through competitive procurement. The Arizona Department of Education (ADE) has designed a process that SFAs must follow to ensure compliance with federal and state requirements. FSMC contracts are executed for a term of one year and the SFA has the option to annually renew their contract for four consecutive one-year terms after the procurement year.

The new Donated Food provisions can be incorporated into SFAs contracts using one of two approaches:

1. If the new provisions do not constitute a material change, the SFAs must incorporate them into their contract renewal amendment by July 1, 2009. For example, if an SFA has a Cost-Reimbursable contract, and the contract already has Donated Food language included, the SFA may be eligible to incorporate these new provisions through a contract amendment. Please contact ADE for clarification to determine if the SFA may incorporate these new provisions using a contract amendment. ADE will work with each SFA to ensure the required USDA language is included in the contract amendment.

*Original Signed*

2. If the new Donated Food provisions constitute a material change, then the SFA must reprocure their FSMC contracts no later than July 1, 2010. For example, if an SFA has a Fixed-Fee contract, then they may have to reprocure their FSMC contract. This SFA cannot incorporate the USDA provisions through a contract amendment and must send the 2009-2010 contract amendment to ADE for approval without the USDA language included. Please contact ADE to determine if the SFA may have to reprocure for a FSMC and ADE will assist an SFA through the procurement process.

If you have any questions regarding this memo please feel free to contact Contracts Management Officer, Ellen Pimental at (602) 542-6208 or email at [Ellen.pimental@azed.gov](mailto:Ellen.pimental@azed.gov).